UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER
WONG, JOSEPH D

ART UNIT	PAPER NUMBER
2166	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>23 July 2007</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-39</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-39</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>27 March 2006</u> is/are: a)☐ accepted or b)☒ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The references cited in the Search Report submitted on 27 June 2006 have been only

considered in part. Unconsidered references will not be listed on any patent resulting from this

application because they were not provided on a separate list in compliance with 37 CFR

1.98(a)(1). In order to have the references printed on such resulting patent, a separate listing,

preferably on a PTO/SB08A and 08B form, must be filed within ONE MONTH of the mailing

date of this communication. NO EXTENSION OF TIME WILL BE GRANTED UNDER

EITHER 37 CFR 1.136(a) OR (b) to comply with this requirement.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

Claims 1-39 are rejected for being directed towards nonstatutory subject matter.

Claim 1 is directed to a method of providing a response to a querying device in a system.

However, under present evaluation, this claim is lacking a physical article to complete the typing

to a system statutory class because every article appears to be a system of software per se or an

element in the abstract rather than a physical one. The determination of software per se is

consistent with what dependent claims 19 and 39 further clarify. See *In re Bilski*. Therefore

dependent claims 2-13, 19 and 39 are rejected under similar reasoning as claim 1.

Claim 14 is directed to a method of operating a user interface of a querying device in a system comprising a querying device and a serving device using a Content Directory Service (CDS) to store media content information. However, under present evaluation, this claim is lacking a physical article to complete the typing to a system statutory class because every article appears to be a system of software per se or an element in the abstract rather than a physical one. See *In re Bilski*. Therefore dependent claims 15-18 are rejected under similar reasoning as claim 14.

Claim 20 is directed to an apparatus for providing information to a querying device in a system. However, every element appears to be consisting of software per se because no physical article is observed within the body of the claims. Software per se is not one of the four categories of invention. Software per se is not a series of steps or acts and thus is not a process. Software per se is not a physical article or object and as such is not a machine or manufacture. Software per se is not a combination of substances and therefore is not a composition of matter. Therefore dependent **claims 21-32** are not statutory.

Claim 33 is directed to user interface of a querying device for use in a system. However, every element appears to be consisting of software per se because no physical article is observed within the body of the claims. Software per se is not one of the four categories of invention. Software per se is not a series of steps or acts and thus is not a process. Software per se is not a physical article or object and as such is not a machine or manufacture. Software per se is not a combination of substances and therefore is not a composition of matter. Therefore dependent **claims 34-38** are not statutory.

Applicants can look to MPEP 2106.01-2106.02 (July 2008), Interim Guidelines for

Examination of Patent Applications for Patent Subject Matter Eligibility, Instant Specification,

and contemporary case law with a matching fact pattern for further suggestions that may be

helpful in overcoming these rejections.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Myers,

"The Importance of Percent-Done Progress Indicators for Computer-Human Interfaces",

April 1985, Proceedings CHI 1985, hereinafter Myers.

As to claim 1, Myers teaches a method of providing a response to a querying device in a

system comprising a querying device and a serving device which uses a Content Directory

Service (CDS) to store media content information (see icons Figs. 7, 1-2, 4 of thermometer,

progress bar, clock percentage dial and hour glass), the method comprising: receiving (P. 13,

Col. 1, Fig. 4, "was used to show the time left to complete a request in a CAD-CAM

application"), from the querying device (Fig. 7, see caption "forms-based query system", a query

for media content information from the CDS of a serving device (Fig. 7, "forms based query

system"); deriving an estimate of at least one parameter of the response (Fig. 4, see hour glass);

and (Fig. 2-3), providing the estimate to the querying device (P. 15, Tables 1-4; P. 13, Col. 2, ¶[2]).

As to claim 2, Myers teaches a method wherein the step of deriving an estimate to the query uses knowledge of previous querying performance of the serving device (P. 13, Col. 2, paragraph [2], "empirical mean 8.601 seconds").

As to claim 3, Myers teaches a method wherein the knowledge of previous querying performance of the serving device is acquired by performing sample queries on the serving device (P. 12, Col. 2, ¶ [2]).

As to claim 4, Myers teaches a method wherein the knowledge of previous querying performance of the serving device is acquired by storing performance data of previous queries (P. 13, Col. 2, ¶[2]).

As to claim 5, Myers teaches a method wherein the knowledge of previous querying performance includes feedback from querying devices (P. 16, Col. 2, ¶[5]), indicative of actual performance of the serving device (P. 16, Col. 1, ¶[3]).

As to claim 6, Myers teaches a method according to preceding charts wherein the step of deriving an estimate uses knowledge of the CDS of the serving device (P. 13, Col. 2, ¶[2]).

As to claim 7, Myers teaches a method wherein the knowledge of the CDS comprises one or more of: structure of the CDS (see icons Figs. 7, 1-2, 4 of thermometer, progress bar, clock percentage dial and hour glass), population of the CDS (Figs. 1-2, 4, 7), searching capabilities of the CDS (Fig. 7, "forms-based query system"), metadata availability (Fig. 7,

"month", "person name", "hits"), capacity of a communication link between the querying device and the serving device (P. 2, Col. 2, ¶[2], "linearly process their input and are then completed").

As to claim 8, Myers teaches a method wherein the knowledge of the CDS is acquired from another device (P. 12, Col. 1, last paragraph), other than the serving device hosting the CDS (P. 12, Col. 2, last paragraph, "character terminal").

As to claim 9, Myers teaches a method wherein the parameter is a time for the serving device to respond to the query (P. 13, ¶[2]).

As to claim 10, Myers teaches a method wherein the parameter is the size of the response (Fig. 7, "Results...1...12", number of results).

As to claim 11, Myers teaches a method to claim wherein the querying device is a device which hosts a user interface and the method is performed by the querying device (Fig. 7).

As to claim 12, Myers teaches a method which is performed by a device other than the querying device (P. 12, Col. 1, last paragraph, "character terminal").

As to claim 13, Myers teaches a method which is performed as a service on behalf of a plurality of querying devices in the system (P. 17, Col. 1, Appendix A).

As to claim 14, Myers teaches a method of operating a user interface of a querying device in a system comprising a querying device and a serving device using a Content Directory Service (CDS) to store media content information (see icons Figs. 7, 1-2, 4 of thermometer, progress bar, clock percentage dial and hour glass), the method comprising: sending a query for media content information from the CDS of a serving device to a device which provides an

estimate of at least one parameter of the response (P. 13, Col. 1, Fig. 4, "was used to show the time left to complete a request in a CAD-CAM application"); receiving the estimate (P. 13, Col. 2, ¶[2], "distribution from 1 to 17 seconds with an empirical mean of 8.601 seconds"); and, providing feedback to a user based on the estimate (P. 1, ¶[1], "provide random progress...busy bee, Fig. 5).

As to claim 15, Myers teaches a method wherein the parameter is a time for the serving device to respond to the query and the feedback depends on the length of the response time (P. 13, Col. 2, paragraph [2], "empirical mean 8.601 seconds").

As to claim 16, Myers teaches a method wherein there are a plurality of different possible types of feedback (P. 17, Col. 1, Appendix A-B; Fig. 1-4), each type of feedback being associated with a particular range of response time (P. 12, see Fig. 4, "clock face" and "hour glass").

As to claim 17, Myers teaches a method wherein the feedback comprises a display which indicates the remaining time (Fig. 4, "hour glass").

As to claim 18, Myers teaches a method wherein the parameter is size of the response and the feedback is at least one navigation control based on the size of the response (Fig. 7).

As to claim 19, Myers teaches software for causing a processor to perform the method (P. 11, Col. 2, ¶[1]).

As to claim 20, Myers teaches apparatus for providing information to a querying device in a system comprising a querying device and a serving device using a Content Directory Service

(CDS) to store media content information (see icons Figs. 7, 1-2, 4 of thermometer, progress bar, clock percentage dial and hour glass), the apparatus comprising: means for receiving (P. 12, Col. 1, ¶[2]), from the querying device (P. 13, Col. 2, ¶[2]), a query for media content information from the CDS of a serving device (P. 13, Col. 1, Fig. 4, "was used to show the time left to complete a request in a CAD-CAM application"); means for deriving an estimate of at least one parameter of the response (P. 13, Col. 2, ¶[2], "distribution from 1 to 17 seconds with an empirical mean of 8.601 seconds"); and, means for providing the estimate to the querying device (P. 1, ¶[1], "provide random progress...busy bee, Fig. 5).

As to claim 21, Myers teaches apparatus wherein the means for deriving an estimate to the query uses knowledge of previous querying performance of the serving device (P. 13, Col. 2, paragraph [2], "empirical mean 8.601 seconds").

As to claim 22, Myers teaches apparatus which is arranged to acquire the knowledge of previous querying performance of the serving device by performing sample queries on the serving device (P. 12, Col. 2, ¶ [2]).

As to claim 23, Myers teaches apparatus which is arranged to acquire the knowledge of previous querying performance of the serving device by storing performance data of previous queries (P. 13, Col. 2, ¶[2]).

As to claim 24, Myers teaches apparatus wherein the knowledge of previous querying performance includes feedback from querying devices (P. 13, Col. 1, ¶[2], "request in a CAD-CAM application"), indicative of actual performance of the serving device (Fig. 4).

As to claim 25, Myers teaches apparatus wherein the means for deriving an estimate uses knowledge of the CDS of the serving device (P. 13, Col. 1, Fig. 4).

As to claim 26, Myers teaches apparatus wherein the knowledge of the CDS comprises one or more of: structure of the CDS (P. 12, Col. 2, ¶[2]; P. 13, Col. 1, ¶[2]), population of the CDS (Fig. 1-4), searching capabilities of the CDS (Fig. 7), metadata availability (Fig. 7, "Month", "Person Name"), capacity of a communication link between the querying device and the serving device (P. 13, Col. 1, Fig. 4).

As to claim 27, Myers teaches apparatus which is arranged to acquire the knowledge of the CDS from another device (P. 13, Col. 2, ¶[2]), other than the serving device hosting the CDS (P. 13, Col. 1, Fig. 4).

As to claim 28, Myers teaches apparatus wherein the parameter is a time for the serving device to respond to the query (P. 13, Col. 2, ¶[2], "distribution from 1 to 17 seconds with an empirical mean of 8.601 seconds").

As to claim 29, Myers teaches apparatus wherein the parameter is the size of the response (P. 12, Col. 2, ¶[2]; Figs. 1, 3-4).

As to claim 30, Myers teaches apparatus in the form of a querying device which hosts a user interface (Figs. 1-4, 7, "forms-based query").

As to claim 31, Myers teaches apparatus in the form of a device which is physically separate from the querying device (P. 11, Col. 2, ¶[1], "slow devices, file transfers to remote machines").

As to claim 32, Myers teaches apparatus which is accessible by a plurality of querying devices in the system (P. 11, Col. 1, Abstract, "all types of output devices"; Col. 2, ¶[1-2], "file transfers to remote machines or printers", "hour-glass, clock...").

As to claim 33, Myers teaches a user interface of a querying device for use in a system comprising the querying device and a serving device which uses a Content Directory Service (CDS) to store media content information (see icons Figs. 7, 1-2, 4 of thermometer, progress bar, clock percentage dial and hour glass), the user interface comprising: means for sending a query for media content information from the CDS of a serving device to a device which provides an estimate of at least one parameter of the response (P. 13, Col. 2, ¶[2], "distribution from 1 to 17 seconds with an empirical mean of 8.601 seconds"); means for receiving the estimate (P. 11, Col. 2, ¶[2], "estimate how much of the task has been completed"); and (P. 11, Col. 2, ¶[2], "hour-glass"), means for providing feedback to a user based on the estimate (P. 12, Col. 1, ¶[2], "approximate estimate of the time is available"; Figs. 1, 4).

As to claim 34, Myers teaches a user interface wherein the parameter is a time for the serving device to respond to the query and the feedback depends on the length of the response time (P. 11, Col. 2, ¶[1], "slow devices, file transfers to remote machines").

As to claim 35, Myers teaches a user interface wherein the means for providing feedback is arranged to provide a plurality of different possible types of feedback (Figs. 1-4, each type of feedback being associated with a particular range of response time (Figs. 1, 4, see "percent complete").

As to claim 36, Myers teaches a user interface wherein the means for providing feedback is arranged to provide a display which indicates the remaining time (Fig. 4, "hourglass").

As to claim 37, Myers teaches a user interface wherein the parameter is size of the response and the means for providing feedback is arranged to provide at least one navigation control based on the size of the response (P. 12, Col. 2, ¶[2], "linearly process their input"; P. 11, Col. 2, ¶[1], "slow devices, file transfers to remote machines").

As to claim 38, Myers teaches a querying device hosting the user interface (Figs. 1-4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Myers in view of Phan, (US 2004/0193609 A1), hereinafter Phan.

As to claim 39, Myers does not expressly teach a method, software, apparatus, user interface or device for use in a system which conforms to Universal Plug and Play (UPnP).

However, Phan teaches a method (Fig. 6), software. (Fig. 5, see "API"), apparatus (Fig. 2), user interface or device for use in a system which conforms to Universal Plug and Play (UPnP) (Fig. 1)

Myers and Phan are analogous art pertinent to the problem to be solved. A skilled artisan would have been motivated to combine Myers and Phan because it provides for access to a consolidated master content directory as discussed in Phan, paragraph ¶[27].

Therefore at the time of invention, it would have been obvious to a person having ordinary skill in the art to combine Myers and Phan because it provides for access to a consolidated master content directory as suggested in Phan, paragraph ¶[27].

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Wong whose telephone number is (571) 270-1015. The examiner can normally be reached on Mondays through Fridays from 10 AM – 6PM.

Applicant initiated interviews may be formally requested in advance by faxing a completed PTO-413A form to the examiner's personal fax number at (571) 270-2015. Form PTO-413A is used by the examiner to prepare for any proposed interview. A detailed agenda listing should be attached including any proposed claim language and/or arguments that will be presented. This form is used to determine whether any proposed interview would advance prosecution and fit within a prescribed time limit.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

Hosain T. Alam can be reached on (571) 272-3978. The fax phone number for the organization

where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://portal.uspto.gov/external/portal/pair. Should you have questions on access to

the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

free). If you would like assistance from a USPTO Customer Service Representative or access to

the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-

1000.

/JDW/
Asst. Examiner, Art Unit 2166
7 January 2009

/Hosain T Alam/

Supervisory Patent Examiner, Art Unit 2166